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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BAYAN MF EL JAMAL,
 6002 Chelsea Cove North
 Hopewell Junction, NY 12533

ALA DAKHIL MOH'D AL JAMAL,
 NVC Case No: AMM2017642003
 42 Ibrahim Al dhmour Street
 Hay Alabdallat Markah Alshamaleyeh
 Amman, Jordan

Plaintiffs,

vs.

IAN G. BROWNLEE, Acting Assistant Secretary
 for Consular Affairs
 U. S. Department of State
 Office of the Legal Advisor
 600 19th Street, NW, Suite 5.600
 Washington, DC 20522

JULIE M. STUFFT, Acting Deputy Assistant
 Secretary for Visa Services
 U. S. Department of State
 Office of the Legal Advisor
 600 19th Street, NW, Suite 5.600
 Washington, DC 20522

BOB JACHIM, Consul General
 U.S. Embassy - Amman Jordan
 Office of the Legal Advisor

Case No.

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1 600 19th Street, NW, Suite 5.600)
Washington, DC 20522)
2)
ANTONY J. BLINKEN, U.S. Secretary of State)
3 U. S. Department of State)
Office of the Legal Advisor)
4 600 19th Street, NW, Suite 5.600)
Washington, DC 20522)
5)
FEDERAL BUREAU OF INVESTIGATION)
6 Attorney General U.S.)
Department of Justice)
7 935 Pennsylvania Avenue, NW)
Washington, DC 20535)
8)
CHRISTOPHER A. WRAY, Director of the)
9 Federal Bureau of Investigation)
935 Pennsylvania Avenue, NW)
10 Washington, DC 20535)
11)
Defendants.)

VERIFIED COMPLAINT FOR MANDAMUS
AND DECLARATORY JUDGMENT

14 The Plaintiffs, Bayan MF El Jamal, and Ala Dakhil Moh'd Al Jamal,
15 through undersigned counsel, complain of the Defendants, IAN G. BROWNLEE,
16 Acting Assistant Secretary for Consular Affairs, U.S. Department of State; JULIE
17 M. STUFFT, Acting Deputy Assistant Secretary for Visa Services, U.S.
18 Department of State; BOB JACHIM, Consul General, U.S. Embassy – Amman,
19 Jordan; ANTONY J. BLINKEN, U.S. Secretary of State; and CHRISTOPHER A.
20 WRAY, Director of the Federal Bureau of Investigation, as follows:

INTRODUCTION

1. This is an action to compel the Defendants and those acting under them to immediately and forthwith take all appropriate action to issue a decision on the lawfully filed Immigrant Visa application of the Plaintiff, Ala Dakhil Moh'd Al Jamal ("Ala Al Jamal" or "Mr. Al Jamal"), which has been pending at the U.S. Embassy – Amman, Jordan (the "Consulate") since on or before October 19, 2017. The Immigrant Visa application is based on an approved Petition for Alien Relative (Form I-130), filed on behalf of Mr. Al Jamal by his U.S. citizen spouse, the Plaintiff, Bayan MF El Jamal ("Bayan El Jamal" or "Mrs. El Jamal"). The Form I-130, which was received by U.S. Citizenship and Immigration Services on October 7, 2016, was approved on or about April 27, 2017 and was forwarded to the Consulate. **See Exh. 1 (Notice of I-130 Approval).** Mr. Al Jamal appeared for an Immigrant Visa interview at the Consulate on October 19, 2017 at 1:00 PM. **See Exh. 2 (Appointment Notice).** Mr. Al Jamal was not issued a visa that day and no reason was given. Despite numerous queries and requests by the Plaintiff, Mrs. El Jamal, the undersigned attorney and Congressional inquiries from the United States House of Representative member, Antonio Delgado, the Consulate has thus far refused to issue a decision on his Immigrant Visa application. The answers to the inquiries are always the same, which is that his case is currently undergoing "administrative processing". **See Exh. 3 (Inquiries and Responses).**

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2. The Plaintiffs are entitled to a decision on Ala Al Jamal's Immigrant Visa application. *See* 22 C.F.R. § 42.81(a) ("Issuance or refusal mandatory. When a visa application has been properly completed and executed before a consular officer in accordance with the provisions of Immigration and Nationality Act and the implementing regulations, the consular officer *must either issue or refuse the visa*") (emphasis added); *see also* §§ 101(a)(9), (16), 201(b)(2)(A)(i) of the Immigration and Nationality Act ("I.N.A."), 8 U.S.C. §§ 1101(a)(9), (16), 1201(b)(2)(A)(i); *Patel v. Reno*, 134 F.3d 929, 932 (9th Cir. 1997) ("A consular officer is required by law to act on visa applications."). The Immigrant Visa application remains within the jurisdiction of the Defendants, who have improperly withheld action on it for over three years, to the detriment of the rights and privileges of the Plaintiffs.

I. JURISDICTION

3. This is a civil action brought pursuant to 8 U.S.C. § 1329 (jurisdiction of the district courts), 28 U.S.C. § 1331 (federal question jurisdiction) and § 1361 (action to compel an officer of the United States to perform his duty) to redress the deprivation of rights, privileges and immunities secured to the Plaintiffs, by which statutes jurisdiction is conferred, and to compel the Defendants to perform a duty that the Defendants owe to the Plaintiffs. Jurisdiction is also conferred by 5 U.S.C. §§ 555(b) and 704, the Administrative Procedure Act ("APA").

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1 4. Under 28 U.S.C. § 1361, the “district courts shall have original jurisdiction of
2 any action in the nature of mandamus to compel an officer or employee of the
3 United States or any agency thereof to perform a duty owed to the plaintiff”.
4 Furthermore, the Plaintiffs are challenging the Consulate’s authority to refuse to
5 adjudicate Ala Al Jamal’s Immigrant Visa application, not challenging a
6 decision within the discretion of the Consulate. Therefore, jurisdiction exists
7 for this Court to consider whether the Consulate has authority to withhold
8 adjudication of the Immigrant Visa application. *See Patel*, 134 F.3d at 932; *Nine*
9 *Iraqi Allies Under Serious Threat Because of Their Faithful Service to the U.S.*
10 *v. Kerry*, 168 F.Supp.3d 268, 296-97 (D.D.C. 2016) (hereinafter, “*Iraqi Allies*”)
11 (finding mandamus jurisdiction where consulate failed to adjudicate Plaintiffs’
12 visa applications in a reasonable time); *Rivas v. Napolitano*, 714 F.3d 1108,
13 1110 (9th Cir. 2013) (mandamus jurisdiction exists ““when [the] suit challenges
14 the authority of the consul to take or fail to take an action as opposed to a
15 decision within the consul’s discretion””) (quoting *Patel*, 134 F.3d at 931-32);
16 *Schutz v. Secretary, Dept. of State*, 2012 WL 275521, at *2 (M.D. Fla. Jan. 31,
17 2012) (finding mandamus jurisdiction where “no consular official has yet
18 decided whether or not to issue the visa”); *Raduga USA Corp. v. U.S. Dept. of*
19 *State*, 440 F.Supp.2d 1140, 1149 (S.D. Cal. 2005) (finding mandamus
20 jurisdiction where “Plaintiffs simply seek to compel the consul to render a final
21 decision on Plaintiffs... visa applications which is mandated under [22 C.F.R.]
22 § 42.81(a)”).
23
24

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- 1 5. The APA requires the Consulate to carry out its duties within a reasonable time.
- 2 5 U.S.C. § 555(b) provides that “[w]ith due regard for the convenience and
- 3 necessity of the parties or their representatives and within a reasonable time,
- 4 each agency shall proceed to conclude a matter presented to it.” The Consulate
- 5 is subject to 5 U.S.C. § 555(b). *See Patel*, 134 F.3d at 931-32 (“Normally a
- 6 consular official’s discretionary decision to grant or deny a visa petition is not
- 7 subject to judicial review. However, when the suit challenges the authority of
- 8 the consul to take or fail to take an action as opposed to a decision taken within
- 9 the consul’s discretion, jurisdiction exists.”) (internal citations omitted); *Iraqi*
- 10 *Allies*, 168 F.Supp.3d at 290-96; *Rivas*, 714 F.3d at 1111 (APA jurisdiction
- 11 exists where Consulate failed to adhere to “mandatory language used in the
- 12 regulation”); *Raduga USA*, 440 F.Supp.2d at 1146 (“Plaintiffs seek only to
- 13 compel the consul to make a decision on their visa applications, which the
- 14 consul is required to make in the first place pursuant to 22 C.F.R. § 42.81(a).
- 15 Accordingly, the Court finds that Plaintiffs have sufficiently demonstrated
- 16 Article III standing to bring this APA mandamus action.”) (internal citation
- 17 omitted). As set forth below, the delay in processing Mr. Al Jamal’s Immigrant
- 18 Visa application is unreasonable.
- 19
- 20 6. The Code of Federal Regulations is unambiguous that the Consulate has a
- 21 mandatory and affirmative duty to adjudicate a properly filed Immigrant Visa
- 22 application where the underlying I-130 petition has been approved by USCIS
- 23 and forwarded to the appropriate overseas consulate. 22 C.F.R. § 42.81(a).
- 24

II. VENUE

7. Venue is proper under 28 U.S.C. § 1391(e), because this is an action against officers and agencies of the United States in their official capacities, brought in the District where the U.S. citizen plaintiff resides and no real property is involved in the action.

III. PARTIES

8. Plaintiff BAYAN EL JAMAL is a U. S. citizen and the petitioner for a Form I-130 Petition for Alien Relative filed on behalf of her spouse, Mr. Ala Al Jamal. She is currently a resident and domiciliary of Hopewell Junction, New York in Dutchess County.

9. Plaintiff ALA AL JAMAL is the beneficiary of an approved I-130 Petition for Alien Relative filed by his U.S. citizen spouse, Bayan El Jamal, and is an applicant for an Immigrant Visa currently pending at the U.S. Embassy – Amman, Jordan.

10. Defendant IAN G. BROWNLEE is Acting Assistant Secretary for Consular Affairs at the U.S. Department of State. This suit is brought against Acting Assistant Secretary Brownlee in his official capacity, as he is charged with oversight of all consular matters, including the processing of immigrant visas.

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11. Defendant JULIE M. STUFFT is Acting Deputy Assistant Secretary for Visa Services at the U.S. Department of State. This suit is brought against Assistant Secretary Stufft in her official capacity, as she is charged with all matters relating to visas and the administration of visa-related laws.

12. Defendant BOB JACHIM is Consul General of the U.S. Embassy in Amman, Jordan. This suit is brought against Consul General Jachim in his official capacity, as he is responsible for all consular activities of the Embassy.

13. Defendant ANTONY G. BLINKEN is the Secretary of State. He is the head of the U. S. Department of State, the department under which Consul General Jachim operates. This suit is brought against Secretary Blinken in his official capacity, as he has supervisory responsibility over the Consul General.

14. Defendant CHRISTOPHER A. WRAY is the Director of the Federal Bureau of Investigation. This suit is brought against Director Wray in his official capacity, as he supervises the Federal Bureau of Investigation, which is responsible for performing background checks on visa applicants.

15. The Federal Bureau of Investigation is a national security organization with intelligence and law enforcement responsibility. It is responsible for performing background checks, including name checks, requested by other agencies including Homeland Security Investigations, Fraud Detection and National

1 Security Directorate, United States Citizenship and Immigration Services
2 (“USCIS”) and the U.S. Department of State (“DOS”).
3

4 IV. CAUSE OF ACTION

5 16. On October 7, 2016, Bayan El Jamal filed with USCIS a Form I-130, Petition
6 for Alien Relative, on behalf of her spouse, Ala Al Jamal, a citizen of Jordan,
7 pursuant to I.N.A. § 201(b)(2)(A)(i) (“Immediate relatives”). The I-130 Petition
8 was approved by USCIS on or about April 27, 2017. *See Exh. 1.* It was then
9 forwarded to the U.S. Embassy – Amman, Jordan for further processing and the
10 scheduling of an Immigrant Visa interview. *See Exh. 2.* On October 19, 2017,
11 Mr. Al Jamal appeared at the consulate for his Immigrant Visa interview. He
12 was not issued a visa that day and was told by the Consular Officer that security
13 background checks were not completed and he should expect an answer within
14 two (2) to six (6) weeks.
15

16 17. Despite numerous queries by Mr. Al Jamal, Mrs. El Jamal, the undersigned
17 attorney, and congressional inquiries from U.S. Congressman Antonio Delgado,
18 the Embassy has thus far refused to issue a decision on his Immigrant Visa
19 application. *See Exh. 3.* The answers to all these inquiries are always been the
20 same: Mr. Al Jamal’s case is pending “administrative processing” and this
21 process is ongoing and cannot be waived or expedited.
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1 18. The Immigrant Visa application has been pending at the U.S. Consulate since
2 on or before October 19, 2017 when Mr. Al Jamal appeared for his Immigrant
3 Visa Interview. The Consulate's over three-and-a-half-year delay in issuing a
4 final decision is unacceptable and unreasonable. *See* 22 C.F.R. § 42.81(a); *see*
5 *also Patel*, 134 F.3d at 932 ("A consular office is required by law to act on visa
6 applications."); *Raduga USA*, 440 F.Supp.2d at 1149 ("The Court finds the
7 consul's four year delay unreasonable and therefore issues a writ of mandamus
8 directing the consul to render a final decision, either granting or denying
9 Plaintiffs' visa applications pursuant to § 42.81(a).").

10
11 19. The issuance or denial of visas is the responsibility of consular officers under
12 the I.N.A. *See* I.N.A. §§ 201(b)(2)(A)(i), 101(a)(9), (16); 22 C.F.R. § 42.81(a);
13 *see also Saavedra Bruno v. Albright*, 197 F.3d 1153, 1156 (D.C. Cir. 1999);
14 *Patel*, 134 F.3d at 933 ("[I]t is uncontested that only State Department consular
15 officers have the power to issue visas."); *Raduga USA*, 440 F.Supp.2d at 1145
16 (holding that "[a]ny delay in processing Plaintiffs' visa applications is therefore
17 traceable solely to the consular officials").

18
19 20. In general, a consular officer's decision to grant or deny a visa petition is not
20 subject to judicial review; this is known as the "doctrine of consular
21 nonreviewability." *See, e.g., Saavedra Bruno*, 197 F.3d at 1159 ("The doctrine
22 holds that a consular official's decision to issue or withhold a visa is not subject
23 to judicial review[.]"); *American Sociological Ass'n v. Chertoff*, 588 F.Supp.2d
24

1 166, 171 (D. Mass. 2008); *American Academy of Religion v. Chertoff*, 463
2 F.Supp.2d 400, 416 (S.D.N.Y. 2006).

3
4 21. However, where a plaintiff “challenges the authority of the consul to take or fail
5 to take an action as opposed to a decision taken within the consul’s discretion,
6 jurisdiction exists.” *Patel*, 134 F.3d at 931-32 (footnotes and citations omitted);
7 *Rivas*, 714 F.3d at 1110 (quoting *Patel*, 134 F.3d at 931-32). *See also American*
8 *Academy of Religion v. Chertoff*, 463 F.Supp.2d at 421 (“[T]he wide latitude
9 given the Executive to grant or deny a visa application ... does not include the
10 authority to refuse to adjudicate a visa application.”); *Iraqi Allies*, 168
11 F.Supp.3d 268, at 290-92 (finding mandamus jurisdiction where visa issuance
12 delayed due to “administrative processing”; jurisdiction fails only when “a
13 consular officer has made a decision with respect to a particular visa
14 application”) (emphasis in original); *Assad v. Holder*, 2013 WL 5935631, at *3
15 (D.N.J. Nov. 1, 2013) (finding mandamus jurisdiction over pending spousal
16 Immigrant Visa petition subject to “administrative review” where the “consular
17 officer has a nondiscretionary duty to act and refuses to do so”); *Schutz*, 2012
18 WL 275521 at *1-*3 (finding mandamus jurisdiction over pending daughter-
19 parent Immigrant Visa petition subject to “administrative processing” where “no
20 consular official has yet decided whether or not to issue the visa”).

21
22 22. The doctrine of consular nonreviewability is simply not applicable here. The
23 Plaintiffs are not asking the Court to review the Consulate’s decision to approve
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1 or deny a visa request. Rather, in this case the Consulate has failed to render
 2 any decision, despite more than three years having passed since Mr. Al Jamal's
 3 visa interview. The Plaintiffs seek only to compel the Consulate to make a
 4 decision on the pending Immigrant Visa application, "which the consul is
 5 required to make in the first place pursuant to 22 C.F.R. § 42.81(a)." *Raduga*
 6 *USA*, 440 F.Supp.2d at 1146 (citing *Patel*, 134 F.3d at 932); *see also Iraqi*
 7 *Allies*, 168 F.Supp.3d 268, at 290-91 (denying motion to dismiss and finding
 8 mandamus jurisdiction "[w]hen the Government simply declines to provide a
 9 decision in the manner provided by Congress, it is not exercising its prerogative
 10 to grant or deny applications but failing to act at all"); *Assad*, 2013 WL 5935631
 11 at *3-*4 (denying motion to dismiss and finding mandatory duty to act on
 12 Immigrant Visa application where Consulate failed to make a decision pursuant
 13 to 22 C.F.R. § 42.81(a)); *Schutz*, 2012 WL 275521 at *1-*3 (same).

14 V. CLAIMS

15
 16 23. A mandamus plaintiff must demonstrate that: (i) he or she has a clear right to
 17 the relief requested; (ii) the defendant has a clear duty to perform the act in
 18 question; and (iii) no other adequate remedy is available. *Liberty Fund, Inc. v.*
 19 *Chao*, 394 F.Supp.2d 105, 113 (D.D.C. 2005); *see also Patel*, 134 F.3d at 933
 20 (duty to adjudicate an immigrant visa application). The Plaintiffs clearly meet
 21 all three of these criteria. *See, e.g., Raduga USA*, 440 F.Supp.2d at 1146
 22 ("Plaintiffs' claim here is clear and certain, and the consul's nondiscretionary,
 23
 24

1 ministerial duty is plainly prescribed. Furthermore, Plaintiffs have no other
2 means to compel the United States consul to make a decision.”).

3
4 24. The Plaintiffs have fully complied with all statutory and regulatory
5 requirements for seeking an Immigrant Visa for Mr. Al Jamal, including
6 obtaining approval of an I-130 Petition for Alien Relative and submitting all
7 necessary documentation and paying all required fees.

8
9 25. The Defendants have willfully and unreasonably failed to adjudicate Mr. Al
10 Jamal’s Immigrant Visa application for more than three and a half years,
11 thereby depriving the Plaintiffs of their rights under 22 C.F.R. § 42.81(a) and
12 the APA to have a properly filed visa application decided in a timely manner.

13
14 26. The Defendants owe the Plaintiffs a duty to act upon Mr. Al Jamal’s Immigrant
15 Visa application. This duty is owed under the I.N.A. and the federal
16 regulations. *See* I.N.A. §§ 201(b)(2)(A(i); 101(a)(9), (16); 22 C.F.R. § 42.81(a);
17 *see also, e.g., Donovan v. U.S.*, 580 F.2d 1203, 1208 (3d Cir. 1978) (holding
18 that mandamus is an appropriate remedy whenever a party demonstrates a clear
19 right to have an action performed by a government official who refuses to act).
20 Adjudication of Mr. Al Jamal’s Immigrant Visa application is a purely
21 ministerial, nondiscretionary act which the Defendants are under an obligation
22 to perform in a timely manner; the Plaintiffs have no alternative means to obtain
23 adjudication of the visa; and their right to issuance of the writ is “clear and
24

1 indisputable.” *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980);
2 *see also In re First Federal Savings and Loan Ass’n of Durham*, 860 F.2d 135,
3 138 (4th Cir. 1988); *Patel*, 134 F3d. at 933 (“[W]e find that the consulate had a
4 duty to act and that to date...the consulate has failed to act in accordance with
5 that duty and the writ [of mandamus] should issue.”).

6
7 27. Mandamus action is also appropriate because the Defendants have failed to act
8 within a reasonable period of time. *See e.g., Liu v. Novak*, 509 F.Supp.2d 1, 9
9 (D.D.C. 2007) (holding that the APA requires the government to act within a
10 reasonable period of time); *see also Sierra Club v. Thomas*, 828 F.2d 783, 794
11 (D.C. Cir. 1987) (stating that “regardless of what course it chooses, the agency
12 is under a duty not to delay unreasonably in making that choice”). The
13 Plaintiffs have already waited more than three years for Mr. Al Jamal’s
14 Immigrant Visa application to be adjudicated, without explanation from the
15 Consulate for the delay, other than the bare statement that it is under
16 “administrative processing”, which is inherently unreasonable. *See Raduga*
17 *USA*, 440 F.Supp.2d at 1149 (finding consulate’s four year delay unreasonable
18 and issuing writ of mandamus instructing consulate to either grant or deny
19 Plaintiffs’ visa applications within 60 days). The Defendants have failed to
20 carry out the adjudicative and administrative functions delegated to them by
21 law. *See I.N.A. §§ 201(b)(2)(A)(i), 101(a)(9), (16); 22 C.F.R. § 42.81(a).*
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1 28. In sum, Mr. Al Jamal's Immigration Visa application has been pending for more
2 than 45 months with no decision. The Plaintiff's claims are clear and certain,
3 and the Embassy's nondiscretionary, ministerial duty is plainly prescribed. In
4 addition, the Plaintiffs have no other means to compel the Defendants to issue a
5 decision on the pending visa application. This Court should therefore issue a
6 writ of mandamus directing the Consulate to render a decision either granting or
7 denying Mr. Al Jamal's Immigrant Visa application pursuant to 22 C.F.R. §
8 42.81(a). *See* I.N.A. §§ 201(b)(2)(A)(i), 101(a)(9), (16); *Patel*, 134 F.3d at 933;
9 *Raduga USA*, 440 F. Supp. 2d at 1149.

10 29. Accordingly, Defendants' failure to act on the Petition constitutes agency action
11 unlawfully withheld or unreasonably delayed, in violation of the Administrative
12 Procedure Act, 5 U.S.C. § 706(1). Further, as demonstrated, Defendants'
13 failure to act on the Petition is arbitrary, capricious, or otherwise not in
14 accordance with law and has violated the Administrative Procedure Act, 5
15 U.S.C. § 706(2)(A).

16
17
18 30. The Defendant's delay is without justification and has forced the Plaintiffs to
19 resort to this Court for relief, and the Plaintiffs are entitled to attorney's fees
20 pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(2).

21 22 VI. PRAYER

23 WHEREFORE, the Plaintiffs pray of this Court:
24

1 A. Compel the Defendants and those acting under them to perform their
2 duty to adjudicate the Immigrant Visa application of Mr. Al Jamal
3 without further delay;

4 B. Grant reasonable attorney's fees and costs of the Court under the Equal
5 Access to Justice Act ("EAJA");

6 C. Grant such other and further relief as this Court may deem proper.

7 Respectfully submitted this 28 day of September, 2021.

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TABLE OF AUTHORITIES

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<i>Allied Chemical Corp. v. Daiflon, Inc.</i> , 449 U.S. 33 (1980)	14
<i>American Sociological Ass’n v. Chertoff</i> , 588 F.Supp.2d 166 (D. Mass. 2008)	10, 11
<i>American Academy of Religion v. Chertoff</i> , 463 F.Supp.2d 400 (S.D.N.Y. 2006)	11
<i>Assad v. Holder</i> , 2013 WL 5935631 (D.N.J. Nov. 1, 2013)	11, 12
<i>Donovan v. U.S.</i> , 580 F.2d 1203 (3d Cir. 1978)	13
<i>In re First Federal Savings and Loan Ass’n of Durham</i> , 860 F.2d 135 (4th Cir. 1988)	14
<i>Liberty Fund, Inc. v. Chao</i> , 394 F.Supp.2d 105 (D.D.C. 2005)	12
<i>Liu v. Novak</i> , 509 F. Supp.2d 1 (D.D.C. 2007)	14
<i>Nine Iraqi Allies Under Serious Threat Because of Their Faithful Service to the U.S. v. Kerry</i> , 168 F.Supp.3d 268 (D.D.C. 2016)	5, 6, 11, 12
<i>Patel v. Reno</i> , 134 F.3d 929 (9th Cir. 1998)	4-6, 10-12, 14, 15
<i>Raduga USA Corp. v. U.S. Dept. of State</i> , 440 F.Supp.2d 1140 (S.D. Cal. 2005)	
.....	5, 6, 10, 12-15
<i>Rivas v. Napolitano</i> , 714 F.3d 1108 (9th Cir. 2013)	5, 6, 11
<i>Saavedra Bruno v. Albright</i> , 197 F.3d 1153 (D.C. Cir. 1999)	10
<i>Schutz v. Secretary, Dept. of State</i> , 2012 WL 275521 (M.D. Fla. Jan. 31, 2012)	5, 11, 12
<i>Sierra Club v. Thomas</i> , 828 F.2d 783 (D.C. Cir. 1987)	14

Statutes

5 U.S.C. § 555	4, 6
5 U.S.C. § 704	4

1	5 U.S.C. § 706	15
2	8 U.S.C. § 1101, I.N.A. § 101	4, 10, 13-15
3	8 U.S.C. § 1151, I.N.A. § 201	4, 9, 10, 13-15
4	8 U.S.C. § 1329, I.N.A. § 279	4
5	28 U.S.C. § 1331	4
6	28 U.S.C. § 1361	4, 5
7	28 U.S.C. § 1391 -----	7
8	28 U.S.C. § 2412 -----	15

Regulations

11	22 C.F.R. § 42.81 -----	4-6, 10, 12-15
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TABLE OF AUTHORITIES

Cases

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<i>American Sociological Ass’n v. Chertoff</i> , 588 F.Supp.2d 166 (D. Mass. 2008)	10, 11
<i>American Academy of Religion v. Chertoff</i> , 463 F.Supp.2d 400 (S.D.N.Y. 2006)	11
<i>Assad v. Holder</i> , 2013 WL 5935631 (D.N.J. Nov. 1, 2013)	11, 12
<i>Donovan v. U.S.</i> , 580 F.2d 1203 (3d Cir. 1978)	13
<i>In re First Federal Savings and Loan Ass’n of Durham</i> , 860 F.2d 135 (4th Cir. 1988)	14
<i>Liberty Fund, Inc. v. Chao</i> , 394 F.Supp.2d 105 (D.D.C. 2005)	12
<i>Liu v. Novak</i> , 509 F. Supp.2d 1 (D.D.C. 2007)	14
<i>Nine Iraqi Allies Under Serious Threat Because of Their Faithful Service to the U.S. v. Kerry</i> , 168 F.Supp.3d 268 (D.D.C. 2016)	5, 6, 11, 12
<i>Patel v. Reno</i> , 134 F.3d 929 (9th Cir. 1998)	4-6, 10-12, 14, 15
<i>Raduga USA Corp. v. U.S. Dept. of State</i> , 440 F.Supp.2d 1140 (S.D. Cal. 2005)	
.....	5, 6, 10, 12-15
<i>Rivas v. Napolitano</i> , 714 F.3d 1108 (9th Cir. 2013)	5, 6, 11
<i>Saavedra Bruno v. Albright</i> , 197 F.3d 1153 (D.C. Cir. 1999)	10
<i>Schutz v. Secretary, Dept. of State</i> , 2012 WL 275521 (M.D. Fla. Jan. 31, 2012)	5, 11, 12
<i>Sierra Club v. Thomas</i> , 828 F.2d 783 (D.C. Cir. 1987)	14

Statutes

5 U.S.C. § 555	4, 6
5 U.S.C. § 704	4

1	5 U.S.C. § 706	15
2	8 U.S.C. § 1101, I.N.A. § 101	4, 10, 13-15
3	8 U.S.C. § 1151, I.N.A. § 201	4, 9, 10, 13-15
4	8 U.S.C. § 1329, I.N.A. § 279	4
5	28 U.S.C. § 1331	4
6	28 U.S.C. § 1361	4, 5
7	28 U.S.C. § 1391 -----	7
8	28 U.S.C. § 2412 -----	15
9		
10	Regulations	
11	22 C.F.R. § 42.81 -----	4-6, 10, 12-15

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TABLE OF CONTENTS

NO. ITEM

1. Approved I-130 Petitioner to Beneficiary
2. Interview Letter Appointment Notice for 10/19/2017 for Amman, Jordan
3. Correspondence Regarding Case Status Inquiries